

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE WAVE STUDIO, LLC, a New York  
Limited Liability Corporation,

Plaintiff,

14 Civ. 8322 (CS) (PED)

v.

MASTERCARD INTERNATIONAL, INC., a  
Delaware corporation; VIRTUOSO, LTD., a  
Delaware corporation; and DOES 1-100,

Defendants.

**DECLARATION OF BRYAN K. CLARK**

I, Bryan K. Clark, declare under penalty of perjury as follows:

1. I am an attorney with the law firm of Vedder Price P.C., and I represent defendants MasterCard International, Inc. and Virtuoso, Ltd. (collectively, “Defendants”), in this action. I am over the age of 21, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge unless the context reveals otherwise.

2. On December 4, 2014, my colleague Blaine Kimrey sent an email to opposing counsel setting forth the basis for consolidation. I was copied on that email. A true and correct copy of that email, with the relevant attachments, is attached hereto as **Exhibit 1**.

3. On December 19, 2014, opposing counsel Vijay Toke sent a response email indicating that plaintiff The Wave Studio, LLC was not willing to stipulate to consolidation. A true and correct copy of that email is attached hereto as **Exhibit 2**.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Executed this 15th day of January 2015 at Chicago, Ill.

  
Bryan K. Clark

**Clark, Bryan**

---

**From:** Kimrey, Blaine C.  
**Sent:** Thursday, December 04, 2014 3:40 PM  
**To:** Vijay Toke  
**Cc:** Clark, Bryan; reuber@leasonellis.com  
**Subject:** The Wave Studio v. MasterCard, et al. and The Wave Studio v. GHM, et al. - consolidation  
**Attachments:** Exhibit A.pdf; Exhibit B.pdf; Exhibit C.pdf; Exhibit D.pdf; Exhibit E.pdf

Dear Vijay:

Pursuant to the Court's request at the hearing on November 24, 2014, I'm writing to provide you with evidence for consideration in connection with Virtuoso and MasterCard's request for consolidation. All of the photos attached to the First Amended Complaint were provided to Virtuoso by the hotels and/or GHM directly. To the extent the photos appeared on MasterCard's Web site, they were provided to MasterCard by Virtuoso. See Exhibit A, email reflecting transmission of materials to MasterCard by Virtuoso in 2010. (The email was sent by Nicole Taylor at Virtuoso to Philip Wang, who was a director of project management at Next Jump, a vendor of MasterCard. Various MasterCard employees were also copied on the transmission.) All photos used by Virtuoso in its publications are provided and approved by the supplier hotels. For example:

- The Chedi Muscat, copying individuals from GHM, provided to Virtuoso in 2010 the image that appeared on the MasterCard Web site. See Exhibit B. This email chain was initiated by Virtuoso employee Robert Duncan, who contacted Simone Broekhaar at The Chedi Muscat and copied an individual at GHM with the email address of [ckoh@ghmhotels.com](mailto:ckoh@ghmhotels.com). In response, Broekhaar attached a photo labeled "Lobby.jpg" and specifically requested that Duncan "change the image to the image attached." Broekhaar copied Sheladina Joseph of GHM on this transmission.
- The Datai Langkawi approved the use of the image that appeared on the MasterCard Web site in 2012. See Exhibit C. This exhibit shows a series of emails. In the first email string, Virtuoso employee Robert Duncan emails Camelia Yin of The Datai Langkawi and asks for approval of a proof for Virtuoso's Best of the Best publication. The proof is attached as "data\_Proof.pdf" and contains a photo. Copied on the email is Anthony Sebastian, general manager of The Datai Langkawi. Earlier in the email string, Duncan had contacted Sebastian and instructed him on the requirements for changes to the Best of the Best publication, including a new photo. Duncan expressly stated: "Please note that you must own your image in Best of the Best and by providing it to us you are granting permission for Virtuoso to print the image in the directory and feature it online in the digital edition." In the second email, Sebastian responds and indicates that Virtuoso "may proceed with the listing."
- The Nam Hai provided to Virtuoso in 2010 the image that appeared on the MasterCard Web site. See Exhibit D. This exhibit shows a series of emails. In the first email, Albert Lafuente of The Nam Hai used WeTransfer.com to send four photos to Robert Duncan of Virtuoso, labeled "The Nam Hai Pool Evening Shot.jpg, The Nam Hai Arrival Area.jpg, The Bar - Entrance.jpg, and The Nam Hai Villa.jpg." Although the links embedded in the email are no longer active, Lafuente's message is still visible and it indicates that these are "our preferred images of the resort." In the second email, Duncan sends Lafuente a proof for Virtuoso's Best of the Best publication. The proof is attached as "namh\_Proof.pdf" and includes a photo that is consistent with the description for "The Nam Hai Arrival Area.jpg." In the third email, Lafuente approves the proof, telling Duncan to "please go ahead."
- GHM, on behalf of The Setai Miami, provided to Virtuoso in 2010 the image that appeared on the MasterCard Web site. See Exhibit E. This email chain was initiated by Virtuoso employee Robert Duncan, who contacted Philippe Parodi of GHM regarding a proof of Best of the Best for The Setai Miami. On September 23, 2010,

Melody Wendt of GHM (copying Parodi) sent Duncan comments on the proof and also asked him to “replace the image with the one attached.” Wendt attached a photo labeled “setai625.jpg.”

As you can see, the images originated from the hotels and/or GHM and thus the allegations against Virtuoso and MasterCard are directly tied to those against GHM.

Additionally, we learned for the first time at the November 24, 2014 hearing that the only reason Leeson Ellis did not sue MasterCard in the GHM case was that Leeson Ellis represents MasterCard in other matters. And we learned yesterday that Leeson Ellis now intends to withdraw from the GHM case because of the MasterCard conflict (I have copied Cameron Reuber of Leeson Ellis in case I’m misinformed on his firm’s intent to withdraw). This is yet another piece of evidence justifying consolidation and supporting our position since we were first retained - the two cases are essentially one in the same.

We hope that with this information, you will consent to consolidation. We look forward to hearing from you.

Sincerely,  
Blaine

**VEDDER PRICE®**

**Blaine C. Kimrey**

Shareholder

T: +1 (312) 609 7865 | F: +1 (312) 609 5005

[bkimrey@vedderprice.com](mailto:bkimrey@vedderprice.com)

Assistant: Elda Capilla, +1 (312) 609 7861

222 North LaSalle Street

Chicago, Illinois 60601

Chicago | New York | Washington, DC

London | San Francisco | Los Angeles

[www.vedderprice.com](http://www.vedderprice.com)

## EXHIBIT A

---

**From:** Nicole Taylor  
**Sent:** Friday, December 17, 2010 11:19 AM  
**To:** [pwang@nextjump.com](mailto:pwang@nextjump.com)  
**Cc:** Gander, John; Adams, Beth; Angela Goicouria; Patricia Johnson; Sharon McGrath  
**Subject:** 2011 Best of the Best for priceless.com/world - IMAGES and XML FILE

Phil,  
I sent a DVD to you in Fed Ex that contains all of the Virtuoso images you will need for the 2011 Virtuoso updates for priceless.com/world (both for BOB and for the WE benefits, you will receive XML files for those next week). You should receive the DVD today. Please return the DVD to me at the address below once your updates are complete.

Attached you will find the XML export of 2011 Best of the Best and also the text file of the BOB landing page content.

This completes Virtuoso's deliverables for 2011 Best of the Best for priceless.com/world.

Thank you,  
Nicole

**Nicole Taylor**  
Senior Manager, Alliance Marketing  
Virtuoso, Ltd.  
"Specialists in the Art of Travel"  
1001 SW Klickitat Way, Suite 105  
Seattle, WA 98134  
T: 206.254.1089  
[www.virtuoso.com](http://www.virtuoso.com)

MasterCard® is the official card of Virtuoso®. Ask us about the special benefits available to your customers who pay with the World Elite MasterCard® or visit [www.virtuoso.com](http://www.virtuoso.com) for full details of this fantastic program.

This message is directed only to the intended recipient. If you are not the intended recipient, please delete this message.

## EXHIBIT B

**From:** Simone Broekhaar <dosm@chedimuscat.com>  
**Sent:** Sunday, October 03, 2010 11:49 PM  
**To:** Robert Duncan  
**Cc:** Sheladina Joseph  
**Subject:** RE: Best of the Best 2011 PROOF FOR REVIEW  
**Attachments:** Lobby.jpg

Dear Robert,

Thank you very much for your reminder, however as in your e-mail of 27.9 you provided us with a deadline until 10 October 2010 you had not yet received a response from us. We would however be most grateful if you could please amend the following:

- \* Please change "most choicest" to "most luxurious"
- \* Please change "Muscat mountains" to "Hajar Mountains"
- \* Please add "and Long Pool, families may make use of the Serai Pool" after Chedi Pool
- \* Please change "an upscale restaurant" to "a choice of five restaurants offering indoor dining and al fresco dining"
- \* Could you also please change the image to the image attached? I have sent the attached image to you by yousendit.com also in case the resolution is not quite high enough.
- \* Please change the number of rooms to 159.

Could you please send us an altered proof? Thank you very much in advance, I look forward to hearing from you.

Kind regards,

Simone Broekhaar

---

Director of Sales & Marketing  
The Chedi Muscat  
P.O. Box 964, Al Khuwair  
Postal Code 133  
Muscat, Sultanate of Oman  
Tel No. + 968 24 52 44 88  
Fax No. + 968 24 49 44 86  
E-Mail: [dosm@chedimuscat.com](mailto:dosm@chedimuscat.com)  
Web pages: [www.ghmhotels.com](http://www.ghmhotels.com) & [www.ghmluxuryhotels.com](http://www.ghmluxuryhotels.com)

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-----Original Message-----

From: Robert Duncan [<mailto:rduncan@virtuoso.com>]  
Sent: Monday, October 04, 2010 3:57 AM  
To: Simone Broekhaar  
Cc: [ckoh@ghmhotels.com](mailto:ckoh@ghmhotels.com)  
Subject: Best of the Best 2011 PROOF FOR REVIEW

Dear Ang,

PLEASE NOTE: AT THIS TIME I HAVE NOT YET RECEIVED YOUR EDITS OR APPROVAL TO THE ATTACHED, WHICH WERE DUE ON FRIDAY. IF I DO NOT RECEIVE YOUR FEEDBACK BY WEDNESDAY, 10/6/2010, YOUR LISTING WILL PRINT AS-IS.

As part of your participation in the Virtuoso Hotels & Resorts Program, you will be featured with a 1/3 page listing in the 2011 edition of Best of the Best. Please find your listing attached for approval with your index attributes marked below. Please review the attached and respond with your edits or approval.

Only changes that make the copy more accurately depict your property will be made. We will not be able to make stylistic edits. If you would like to make copy edits, please indicate where you would like the change to be made and send the exact word-for-word phrasing that you wish substituted. The total word count for the main body copy should stay around 100.

Also, your Virtuoso Amenity is meant to highlight one or two unique, value-added offerings and there is generally not space to feature all of your amenities. Upgrade upon arrival, breakfast for two daily, early check-in/late checkout and preferred rates and availability are already described on the first page of the book for all properties and will not be featured in your individual listing.

Don't hesitate to contact me with any questions and I look forward to hearing from you soon.

Thanks and best regards,

Robert

--

Robert Duncan  
Account Manager - Direct Marketing  
Virtuoso, Ltd.  
ched



## EXHIBIT C

**From:** Robert Duncan  
**Sent:** Friday, September 21, 2012 5:07 PM  
**To:** Camelia Yim  
**Cc:** Anthony Sebastian; Joanne Gasper; Harjeet Amber  
**Subject:** RE: RESEND - For Review: Virtuoso Best of the Best 2013 proof  
**Attachments:** data\_Proof.pdf

Thank you for sending your edits. Unfortunately with your changes the copy was running long and had to be edited. Will you please let me know if the revised attached is approved on Monday?

Best,  
Robert

--

**Robert Duncan** | Senior Account Manager, Marketing  
**Virtuoso®** | 1001 SW Klickitat Way STE 105 | Seattle, WA 98134 | 206.254.2906

This message is directed only to the intended recipient. If you are not the intended recipient, please delete this message.

---

**From:** Camelia Yim [mailto:cameliayim@shr.my]  
**Sent:** Thursday, September 20, 2012 2:30 AM  
**To:** Robert Duncan  
**Cc:** Anthony Sebastian; Joanne Gasper; Harjeet Amber  
**Subject:** RESEND - For Review: Virtuoso Best of the Best 2013 proof  
**Importance:** High

Dear Robert

Please discard my earlier email and refer to this latest email.

1. Please replace the resort description with attached in Word doc.
2. Tick Culinary Program
3. Number of Rooms should be 124
4. Distance from Langkawi Airport (LGK): 35 minutes

My apologies for the inconvenience caused.

Thank you & best regards.

**ARCHIPELAGO**  
HOTELS & RESORTS

**Camelia Yim**  
Marketing Communications Manager

---

**From:** Camelia Yim  
**Sent:** Thursday, September 20, 2012 4:06 PM  
**To:** 'rduncan@virtuoso.com'  
**Cc:** 'Anthony Sebastian'; 'Joanne Gasper'; 'Harjeet Amber'  
**Subject:** FW: For Review: Virtuoso Best of the Best 2013 proof

Dear Robert

Hope this email find you well and fine.

I am writing to provide comments on the Best Directory proof for The Datai Langkawi.

1. Please replace the resort description with attached in Word doc.
2. Tick Culinary Program

Once the above comments are done, we are set to go.

Thank you & best regards.

**ARCHIPELAGO**  
HOTELS & RESORTS

**Camelia Yim**

Marketing Communications Manager

Archipelago Hotels and Resorts Sdn Bhd – (Company No. 892213-V)

Level 3A-3, Building B, Peremba Square, Saujana Resort, Section U2, 40150 Shah Alam, Selangor Darul Ehsan, Malaysia

**P:** +603 7622 6600 **M:** +6012 344 5011 **F:** +603 7622 6606 **E:** [cameliayim@shr.my](mailto:cameliayim@shr.my) **W:** [www.shr.my](http://www.shr.my)

This email message and enclosures are confidential and are intended solely for the named addressee(s). If you receive this email in error, please notify the sender by return email and delete all copies of this message from your computer network. All statements made in this e-mail are subject to contract. The contents are not to be regarded as a contractual offer or acceptance. Attachments to this email may contain software viruses that could damage your computer system despite our efforts to minimise the risk of such viruses. You should carry out your own virus checks before opening any attachment.

-----Original Message-----

From: Robert Duncan [<mailto:rduncan@virtuoso.com>]

Sent: Monday, 17 September, 2012 7:29 AM

To: Anthony Sebastian

Subject: For Review: Virtuoso Best of the Best 2013 proof

Dear Anthony,

Please find your 2013 Best of the Best directory proof attached for review. Will you please review the attached and respond with your approval or any updates on or before Friday, 9/21/2012?

Please note that only changes that make the copy more accurately depict your property will be made. We will not be able to make stylistic edits. If you would like to make copy edits, please indicate where in the text you would like the change made and send the exact word-for-word phrasing that you wish substituted. The total word count for the main body copy must stay at or below 100.

If you wish to feature a new image, I can receive up to 8 MB via email or I recommend [www.yousendit.com](http://www.yousendit.com) or [www.wetransfer.com](http://www.wetransfer.com). Please note that you must own your image in Best of the Best and by providing it to us you are granting permission for Virtuoso to print the image in the directory and feature it online in the digital edition. We cannot accept stock photography.

Also, your Virtuoso Amenity is meant to highlight one or two unique, value-added offerings and there is not space to feature all of your amenities. All amenities are per room unless otherwise noted. Upgrade upon arrival, breakfast for two daily, early check-in/late checkout and preferred rates and availability are already included on the first page of the book for all properties and will not be featured in your individual listing.

Finally, your index attributes will be simple check marks at the back of the directory. Please take guest expectations into account when you are deciding what to highlight. There is not space available to add any terms, conditions or explanation. For the new "Shopping Area" category, you must have at least 5+ retail outlets nearby or on-site, not including a gift shop. For "Culinary Program", this is meant for ongoing classes/tastings/tours, not to indicate that you have dining available. For the number of rooms, this must be the total number and we are not able to divide it up between categories. Regarding the distance to the airport, we are only able to list one airport.

There is no additional cost for this listing as it is part of your participation in the 2013 Virtuoso Hotels & Resorts program.

Don't hesitate to contact me with any questions and I look forward to hearing from you soon.

Thanks and best regards,

Robert

--

Robert Duncan  
Senior Account Manager, Direct Marketing Virtuoso, Ltd.  
data

# BEST OF THE BEST

Your Guide to the World's Best Hotel Experiences

## PROOF

Section: ASIA & PACIFIC



### THE DATAI LANGKAWI

#### Langkawi, Malaysia

With its tropical rainforest setting and secluded white sandy beach on the Andaman Sea, The Datai Langkawi provides the ultimate escape. Choose from several room styles, including the new Beach Villas, which feature separate living areas that flow effortlessly to an enclosed lush outdoor garden, complete with a rain shower and 40-foot private swimming pool. Make time for treatments at The Spa at The Datai. Later, savor Thai specialties along with rainforest and ocean views at The Pavilion, local curry and Indian specialties in a lush setting at The Gulai House or a mix of Malaysian and Western cuisines at The Dining Room.

**Distance from Langkawi Airport (LGK): 35 minutes**

#### VIRTUOSO AMENITY

Balinese massage for two, once per stay.

#### IN THE KNOW

Consider a Spa Ritual Package, in which you're pampered with a different holistic spa treatment each day of your stay.

- Index:
- |  |   |  |  |
|--|---|--|--|
| <input checked="" type="checkbox"/> Beach            | <input checked="" type="checkbox"/> Golf          | <input checked="" type="checkbox"/> Pool | <input checked="" type="checkbox"/> Spa    |
| <input type="checkbox"/> Children's Program          | <input type="checkbox"/> Michelin Star Restaurant | <input type="checkbox"/> Shopping Area   | <input checked="" type="checkbox"/> Villas |
| <input checked="" type="checkbox"/> Culinary Program | <input type="checkbox"/> Pet-Friendly             | <input type="checkbox"/> Ski Area        |  |

**Number of Rooms:** 124

This proof is a close facsimile of your listing in the Best of the Best directory. Please use it to approve the text and photo. Adjustments will be made to the final layout as needed for spacing and other issues.

**From:** Anthony Sebastian <anthonysebastian@dataihotels.com>  
**Sent:** Friday, September 21, 2012 5:11 PM  
**To:** Robert Duncan; Camelia Yim  
**Cc:** Harjeet Amber  
**Subject:** RE: RESEND - For Review: Virtuoso Best of the Best 2013 proof

Dear Robert,

Thank you for sending through the revised edited copy and it is fine with us.

You may proceed with the listing

Thank you and kind regards

Anthony

Anthony A. Sebastian  
GENERAL MANAGER



Jalan Teluk Datai, 07000 Pulau Langkawi, Kedah Darul Aman, Malaysia  
Telephone : +60 4 959 2500 Fax: +60 4 959 2602 Mobile: + 60 14 328 2261  
[anthonysebastian@dataihotels.com](mailto:anthonysebastian@dataihotels.com) [www.dataihotels.com](http://www.dataihotels.com)

TripAdvisor 2012 Traveler's Choice Award - Overall Winner in Four Categories  
TripAdvisor 2012 Certificate of Excellence Award  
Condé Nast Traveller UK - Readers' Travel Award 2011  
SmartTravelAsia.com - Best in Travel Pool 2011  
Best of Malaysia Awards 2011 - Excellent Award in The Best Eco  
Bloomberg Asia Pacific Hotel Awards 2011-12 – Best Resort Hotel in Malaysia  
SmartTravelAsia.com - Best in Travel Pool 2012



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**From:** Robert Duncan [mailto:[rduncan@virtuoso.com](mailto:rduncan@virtuoso.com)]  
**Sent:** Saturday, 22 September, 2012 6:07 AM  
**To:** Camelia Yim  
**Cc:** Anthony Sebastian; Joanne Gasper; Harjeet Amber  
**Subject:** RE: RESEND - For Review: Virtuoso Best of the Best 2013 proof

Thank you for sending your edits. Unfortunately with your changes the copy was running long and had to be edited. Will you please let me know if the revised attached is approved on Monday?

Best,  
Robert

--

**Robert Duncan** | Senior Account Manager, Marketing  
Virtuoso® | 1001 SW Klickitat Way STE 105 | Seattle, WA 98134 | 206.254.2906

This message is directed only to the intended recipient. If you are not the intended recipient, please delete this message.

---

**From:** Camelia Yim [<mailto:cameliayim@shr.my>]  
**Sent:** Thursday, September 20, 2012 2:30 AM  
**To:** Robert Duncan  
**Cc:** Anthony Sebastian; Joanne Gasper; Harjeet Amber  
**Subject:** RESEND - For Review: Virtuoso Best of the Best 2013 proof  
**Importance:** High

Dear Robert

Please discard my earlier email and refer to this latest email.

1. Please replace the resort description with attached in Word doc.
2. Tick Culinary Program
3. Number of Rooms should be 124
4. Distance from Langkawi Airport (LGK): 35 minutes

My apologies for the inconvenience caused.

Thank you & best regards.

**ARCHIPELAGO**  
HOTELS & RESORTS

**Camelia Yim**  
Marketing Communications Manager

---

**From:** Camelia Yim  
**Sent:** Thursday, September 20, 2012 4:06 PM  
**To:** 'rduncan@virtuoso.com'  
**Cc:** 'Anthony Sebastian'; 'Joanne Gasper'; 'Harjeet Amber'  
**Subject:** FW: For Review: Virtuoso Best of the Best 2013 proof

Dear Robert

Hope this email find you well and fine.

I am writing to provide comments on the Best Directory proof for The Datai Langkawi.

1. Please replace the resort description with attached in Word doc.
2. Tick Culinary Program

Once the above comments are done, we are set to go.

Thank you & best regards.

**ARCHIPELAGO**  
HOTELS & RESORTS

**Camelia Yim**  
Marketing Communications Manager  
Archipelago Hotels and Resorts Sdn Bhd – (Company No. 892213-V)

Level 3A-3, Building B, Peremba Square, Saujana Resort, Section U2, 40150 Shah Alam, Selangor Darul Ehsan, Malaysia

P: +603 7622 6600 M: +6012 344 5011 F: +603 7622 6606 E: [cameliayim@shr.my](mailto:cameliayim@shr.my) W: [www.shr.my](http://www.shr.my)

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-----Original Message-----

From: Robert Duncan [<mailto:rduncan@virtuoso.com>]

Sent: Monday, 17 September, 2012 7:29 AM

To: Anthony Sebastian

Subject: For Review: Virtuoso Best of the Best 2013 proof

Dear Anthony,

Please find your 2013 Best of the Best directory proof attached for review. Will you please review the attached and respond with your approval or any updates on or before Friday, 9/21/2012?

Please note that only changes that make the copy more accurately depict your property will be made. We will not be able to make stylistic edits. If you would like to make copy edits, please indicate where in the text you would like the change made and send the exact word-for-word phrasing that you wish substituted. The total word count for the main body copy must stay at or below 100.

If you wish to feature a new image, I can receive up to 8 MB via email or I recommend [www.yousendit.com](http://www.yousendit.com) or [www.wetransfer.com](http://www.wetransfer.com). Please note that you must own your image in Best of the Best and by providing it to us you are granting permission for Virtuoso to print the image in the directory and feature it online in the digital edition. We cannot accept stock photography.

Also, your Virtuoso Amenity is meant to highlight one or two unique, value-added offerings and there is not space to feature all of your amenities. All amenities are per room unless otherwise noted. Upgrade upon arrival, breakfast for two daily, early check-in/late checkout and preferred rates and availability are already included on the first page of the book for all properties and will not be featured in your individual listing.

Finally, your index attributes will be simple check marks at the back of the directory. Please take guest expectations into account when you are deciding what to highlight. There is not space available to add any terms, conditions or explanation. For the new "Shopping Area" category, you must have at least 5+ retail outlets nearby or on-site, not including a gift shop. For "Culinary Program", this is meant for ongoing classes/tastings/tours, not to indicate that you have dining available. For the number of rooms, this must be the total number and we are not able to divide it up between categories. Regarding the distance to the airport, we are only able to list one airport.

There is no additional cost for this listing as it is part of your participation in the 2013 Virtuoso Hotels & Resorts program.

Don't hesitate to contact me with any questions and I look forward to hearing from you soon.

Thanks and best regards,

Robert

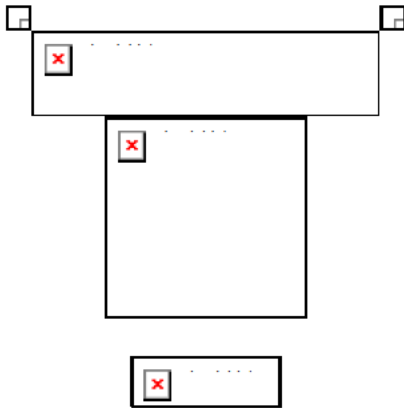
--

Robert Duncan

Senior Account Manager, Direct Marketing Virtuoso, Ltd.  
data

## EXHIBIT D

**From:** WeTransfer <noreply@wetransfer.com>  
**Sent:** Wednesday, September 29, 2010 8:52 PM  
**To:** Robert Duncan  
**Subject:** dosm@thenamhai.com has sent you a file via WeTransfer

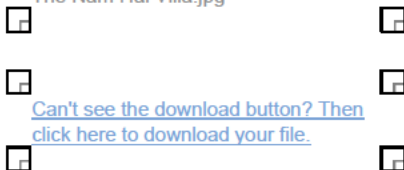


*Hi Robert Thank you for the reminder. Please see attached our preferred images of the resort. Cheers Albert*



[dosm@thenamhai.com](mailto:dosm@thenamhai.com)  
has sent you a file.

**WeTransfer-UAQfNat0.zip**  
(29MB)  
containing the following file(s):  
The Nam Hai Pool Evening Shot.jpg  
The Nam Hai Arrival Area.jpg  
The Bar - Entrance.jpg  
The Nam Hai Villa.jpg



[Can't see the download button? Then click here to download your file.](#)

If you have any questions about WeTransfer, or to read our [terms](#) and [privacy policy](#), please visit [wetransfer.info](http://wetransfer.info). © 2010 WeTransfer

**From:** Robert Duncan  
**Sent:** Friday, October 01, 2010 3:16 PM  
**To:** 'dosm@thenamhai.com'  
**Subject:** Best of the Best 2011 PROOF FOR REVIEW  
**Attachments:** namh\_Proof.pdf

Dear Albert,

Thank you for sending changes to your Best of the Best listing. You'll note in the attached that they have been made. Will you please send me your approval at your earliest convenience?

Thanks and best regards,

Robert Duncan

Account Manager – Direct Marketing  
Virtuoso, Ltd.  
namh

# BEST OF THE BEST

Your Guide to the World's Best Hotel Experiences

## PROOF

Section: ASIA & PACIFIC



### THE NAM HAI

#### Hoi An, Vietnam

Sitting on an enviable stretch of China Beach near historic Hoi An, The Nam Hai is a prestigious luxury resort catering to the savviest of travelers. Architecture and nature harmonize in a lush setting, making the most of views across the South China Sea and the surrounding tropical grounds. Each villa is an immaculate escape complete with indoor and outdoor sitting areas and, in the case of the Pool Villas, a private swimming pool. No visit is complete without treatments at the tranquil spa, with its spacious pavilions, chromotherapy baths, relaxation area and steam showers.

Distance from Da Nang Airport (DAD): 25 minutes

#### VIRTUOSO AMENITY

Champagne and canapés in room upon arrival and, for stays of two nights or more, dinner for two, once per stay.

#### IN THE KNOW

At the east end of Hoi An's Central Market, there's a special stall for silk tailors – much more economical than those along Le Loi Street.

#### Index:

- ☒ 24 Hour Dining
- ☒ Beach
- ☒ Business Center

- ☒ Butler Service
- ☒ Children's Program
- ☒ Conference Facilities

- ☒ Fitness Facility
- ☒ Golf
- ☐ Pets Allowed

- ☒ Pool
- ☒ Spa

Number of Rooms: 100

This proof is a close facsimile of your listing in the Best of the Best directory. Please use it to approve the text and photo. Adjustments will be made to the final layout as needed for spacing and other issues.

**From:** Albert Lafuente <dosm@thenamhai.com>  
**Sent:** Friday, October 01, 2010 9:14 PM  
**To:** Robert Duncan  
**Subject:** Re: Best of the Best 2011 PROOF FOR REVIEW

Dear Robert, please go ahead...

Albert

----- Original Message -----

From: "Robert Duncan" <[rduncan@virtuoso.com](mailto:rduncan@virtuoso.com)>  
To: <[dosm@thenamhai.com](mailto:dosm@thenamhai.com)>  
Sent: Saturday, October 02, 2010 3:16 AM  
Subject: Best of the Best 2011 PROOF FOR REVIEW

Dear Albert,

Thank you for sending changes to your Best of the Best listing. You'll note in the attached that they have been made. Will you please send me your approval at your earliest convenience?

Thanks and best regards,

Robert Duncan

Account Manager – Direct Marketing  
Virtuoso, Ltd.  
namh

\_\_\_\_\_ NOD32 5496 (20101001) Information \_\_\_\_\_

This message was checked by NOD32 antivirus system.  
<http://www.eset.com>

\_\_\_\_\_ NOD32 5496 (20101001) Information \_\_\_\_\_

This message was checked by NOD32 antivirus system.  
<http://www.eset.com>

## EXHIBIT E

**From:** Melody Wendt <mwendt@ghmamericas.com>  
**Sent:** Thursday, September 23, 2010 5:03 PM  
**To:** Robert Duncan  
**Cc:** Philippe Parodi  
**Subject:** RE: Best of the Best 2011 PROOF FOR REVIEW  
**Attachments:** setai625.jpg  
  
**Importance:** High

Dear Robert,

Below please find the revised copy for The Setai insert in the Best of Best 2011. If we could please add that we have a business center and children's program, as well as replace the image to the one attached, that would be great. Thank you in advance for your help!

### **THE SETAI**

Miami Beach (South Beach)

In the heart of South Beach, The Setai maintains a serene atmosphere complemented by Asian and Art Deco influences. Legendary hotelier Adrian Zecha created a masterpiece with this oceanfront resort: it houses myriad dining experiences, from authentic Asian to Mediterranean and seafood; three swimming pools with varying temperatures; private daybeds on the beach; exceptional concierge service; and a world-class spa, offering Pacific Rim treatments in private spa suites. Should you choose to spend your days on the beach, enjoy full VIP treatment with dedicated Pool Concierges to ensure no desire goes unfilled.

Distance from Miami Airport (MIA): 12 mi/19 km

### **VIRTUOSO AMENITY**

\$100 spa credit, once per stay.

### **IN THE KNOW**

The spa offers a number of Asian-inspired body/mind treatments, as well as private Pilates and yoga classes on the beach.

Best Regards,

Melody Wendt  
Marketing & Public Relations Manager  
The Setai South Beach  
2001 Collins Avenue  
Miami Beach, FL 33139  
T: 305.520.6000  
D: 305.520.6235  
F: 305.520.6505  
[www.setai.com](http://www.setai.com)

-----Original Message-----

From: Robert Duncan [<mailto:rduncan@virtuoso.com>]  
Sent: Wednesday, September 22, 2010 9:25 PM  
To: Philippe Parodi  
Cc: Heather Roberts  
Subject: Best of the Best 2011 PROOF FOR REVIEW

Dear Philippe,

PLEASE NOTE: that I have not yet received your edits or approval on the attached, which were due on September 16. Will you please confirm that you have received this proof and send me your edits or approval at your first convenience?

As part of your participation in the Virtuoso Hotels & Resorts Program, you will be featured with a 1/3 page listing in the 2011 edition of Best of the Best. Please find your listing attached for approval with your index attributes marked below. Please review the attached and respond with your edits or approval.

Only changes that make the copy more accurately depict your property will be made. We will not be able to make stylistic edits. If you would like to make copy edits, please indicate where you would like the change to be made and send the exact word-for-word phrasing that you wish substituted. The total word count for the main body copy should stay around 100.

Also, your Virtuoso Amenity is meant to highlight one or two unique, value-added offerings and there is generally not space to feature all of your amenities. Breakfast for two daily, early check-in/late checkout and preferred rates and availability are already described on the first page of the book for all properties and will not be featured in your individual listing.

Don't hesitate to contact me with any questions and I look forward to hearing from you soon.

Thanks and best regards,

Robert

—

Robert Duncan  
Account Manager - Direct Marketing  
Virtuoso, Ltd.



**Clark, Bryan**

---

**From:** Vijay Toke <vijay@cobaltlaw.com>  
**Sent:** Friday, December 19, 2014 9:23 PM  
**To:** Kimrey, Blaine C.  
**Cc:** Clark, Bryan; Nate Garhart; Amanda Conley; Client File; Nikki Abdallah  
**Subject:** Re: The Wave Studio v. MasterCard, et al. and The Wave Studio v. GHM, et al. - consolidation

Dear Blaine:

Wave has reviewed the materials you provided to establish that GHM was the source of the infringing photographs at issue in the Mastercard/Virtuoso action. Based on the documents you provided, Wave cannot stipulate to consolidation.

We note that the documents cover only four of the photographs involved in the action. We do not believe the evidence you submitted is sufficient to establish GHM was the source of each of those four photographs. Moreover, as you know, there are at least 13 other photographs that Defendants infringed for which you provided no evidence suggesting any connection between GHM and your clients. With nearly three-quarters of the photographs at issue unaccounted for with respect to GHM being the source—even assuming without admitting that the evidence submitted does show GHM was the source of four of the photographs—there is no basis to consolidate.

We are, of course, happy to consider additional evidence for the photographs at issue. But until and unless Defendants provide conclusive evidence for each of the photographs, we cannot agree to consolidate with the current GHM litigation.

Thank you.

Best,

Vijay

VIJAY TOKE  
for COBALT LLP

918 Parker Street Bldg A21  
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main: 510.841.9800  
direct dial: 510.229.5223  
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fax: 510.295.2401

[cobaltlaw.com](http://cobaltlaw.com)

Find Cobalt's tweets by topic [here](#)

Conference Line: 510-972-9833  
Code: None needed

On Dec 4, 2014, at 1:40 PM, Kimrey, Blaine C. <[bkimrey@vedderprice.com](mailto:bkimrey@vedderprice.com)> wrote:

Dear Vijay:

Pursuant to the Court's request at the hearing on November 24, 2014, I'm writing to provide you with evidence for consideration in connection with Virtuoso and MasterCard's request for consolidation. All of the photos attached to the First Amended Complaint were provided to Virtuoso by the hotels and/or GHM directly. To the extent the photos appeared on MasterCard's Web site, they were provided to MasterCard by Virtuoso. See Exhibit A, email reflecting transmission of materials to MasterCard by Virtuoso in 2010. (The email was sent by Nicole Taylor at Virtuoso to Philip Wang, who was a director of project management at Next Jump, a vendor of MasterCard. Various MasterCard employees were also copied on the transmission.) All photos used by Virtuoso in its publications are provided and approved by the supplier hotels. For example:

- The Chedi Muscat, copying individuals from GHM, provided to Virtuoso in 2010 the image that appeared on the MasterCard Web site. See Exhibit B. This email chain was initiated by Virtuoso employee Robert Duncan, who contacted Simone Broekhaar at The Chedi Muscat and copied an individual at GHM with the email address of [ckoh@ghmhotels.com](mailto:ckoh@ghmhotels.com). In response, Broekhaar attached a photo labeled "Lobby.jpg" and specifically requested that Duncan "change the image to the image attached." Broekhaar copied Sheladina Joseph of GHM on this transmission.
- The Datai Langkawi approved the use of the image that appeared on the MasterCard Web site in 2012. See Exhibit C. This exhibit shows a series of emails. In the first email string, Virtuoso employee Robert Duncan emails Camelia Yin of The Datai Langkawi and asks for approval of a proof for Virtuoso's Best of the Best publication. The proof is attached as "data\_Proof.pdf" and contains a photo. Copied on the email is Anthony Sebastian, general manager of The Datai Langkawi. Earlier in the email string, Duncan had contacted Sebastian and instructed him on the requirements for changes to the Best of the Best publication, including a new photo. Duncan expressly stated: "Please note that you must own your image in Best of the Best and by providing it to us you are granting permission for Virtuoso to print the image in the directory and feature it online in the digital edition." In the second email, Sebastian responds and indicates that Virtuoso "may proceed with the listing."
- The Nam Hai provided to Virtuoso in 2010 the image that appeared on the MasterCard Web site. See Exhibit D. This exhibit shows a series of emails. In the first email, Albert Lafuente of The Nam Hai used [WeTransfer.com](http://WeTransfer.com) to send four photos to Robert Duncan of Virtuoso, labeled "The Nam Hai Pool Evening Shot.jpg, The Nam Hai Arrival Area.jpg, The Bar - Entrance.jpg, and The Nam Hai Villa.jpg." Although the links embedded in the email are no longer active, Lafuente's message is still visible and it indicates that these are "our preferred images of the resort." In the second email, Duncan sends Lafuente a proof for Virtuoso's Best of the Best publication. The proof is attached as "namh\_Proof.pdf" and includes a photo that is consistent with the description for "The Nam Hai Arrival Area.jpg." In the third email, Lafuente approves the proof, telling Duncan to "please go ahead."
- GHM, on behalf of The Setai Miami, provided to Virtuoso in 2010 the image that appeared on the MasterCard Web site. See Exhibit E. This email chain was initiated by Virtuoso employee Robert Duncan, who contacted Philippe Parodi of GHM regarding a proof of Best of the Best for The Setai Miami. On September 23, 2010, Melody Wendt of GHM (copying Parodi) sent Duncan comments on the proof and also asked him to "replace the image with the one attached." Wendt attached a photo labeled "setai625.jpg."

As you can see, the images originated from the hotels and/or GHM and thus the allegations against Virtuoso and MasterCard are directly tied to those against GHM.

Additionally, we learned for the first time at the November 24, 2014 hearing that the only reason Leeson Ellis did not sue MasterCard in the GHM case was that Leeson Ellis represents MasterCard in other matters. And we learned yesterday that Leeson Ellis now intends to withdraw from the GHM case because of the MasterCard conflict (I have copied Cameron Reuber of Leeson Ellis in case I'm misinformed on his firm's intent to withdraw). This is yet another piece of evidence justifying consolidation and supporting our position since we were first retained - the two cases are essentially one in the same.

We hope that with this information, you will consent to consolidation. We look forward to hearing from you.

Sincerely,  
Blaine

**VEDDER PRICE®**

**Blaine C. Kimrey**

Shareholder

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